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WELLS FARGO BANK, N.A.

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

IN RE:

Ennis Homes, Inc.,

Debtor

No. 09-10848-A-11

CHAPTER 11

DC No. KDG-3

**OBJECTION TO ENNIS HOME'S
MOTION TO USE CASH
COLLATERAL**

Date: March 11, 2009

Time: 1:30 p.m.

Place: United States Bankruptcy Court
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

Judge: Hon. Whitney Rimel

I. Introduction

Secured creditor, Wells Fargo Bank, N.A., ("Wells Fargo") objects to the Motion to Use Cash Collateral and Grant Adequate Protection ("Motion") filed March 4, 2009 by Ennis Homes, Inc. (the "Debtor"). The Debtor has not established essential elements to

1 support the Debtor's use of Wells Fargo's cash collateral. Based on the Motion and its
2 supporting papers, Wells Fargo has the following principal objections:

- 3 1. Wells Fargo cannot determine how much of the Debtor's proposed cash is
4 cash collateral of Wells Fargo.
- 5 2. There is no indication of whether the Debtor will use any of the
6 designated cash collateral to preserve or protect collateral of Wells Fargo
7 or of some other creditor.
- 8 3. To the extent that Wells Fargo's cash collateral is used, the Debtor has
9 provided no assurance that the replacement liens offered to Wells Fargo
10 by the Debtor have any value at all. Junior liens on property that is
11 already worth less than the amounts secured by the senior lien holders
12 provide no adequate protection. The Debtor has provided no evidence
13 that there is any equity value available on any of its property that would
14 offer protection to Wells Fargo.
- 15 4. Even if there were some equity available on the property subject to the
16 proposed junior liens, providing a junior lien on land is certainly not the
17 indubitable equivalent of cash in a deposit account.
- 18 5. The Debtor suggests it will build out and sell additional properties to
19 provide replacement collateral but there is no source of funds identified
20 for such construction. There is no indication that there would be
21 additional value beyond what is needed to pay the senior lender on the
22 property to be constructed and sold. There is also no evidence that such
23 construction would produce sales if the Debtor could find new funding for
24 the construction.

1 II. Wells Fargo is a secured creditor.

2 The Debtor acknowledges in the Motion that Wells Fargo is a secured creditor.
3 Debtor, Wells Fargo, and Ennis Land Development, Inc. (“Ennis Land”; formerly known
4 as Ennis Land Development, LLC) are parties to that certain (a) Revolving Loan
5 Agreement dated as of April 15, 2005 (as amended from time to time, the “Loan
6 Agreement”), and (b) Interest Rate Master Agreement dated as of June 16, 2005 (the
7 “Interest Rate Agreement” and together with the Loan Agreement, the “Wells Fargo
8 Agreements”). The Debtor and Ennis Land are jointly and severally liable to Wells
9 Fargo under each of the Wells Fargo Agreements. The outstanding principal balance of
10 due on the Wells Fargo Agreements is in excess of \$30 million as of the filing of the
11 Debtor’s chapter 11 case on February 2, 2009.

12 Debtor and Ennis Land’s obligations in connection with the Loan Agreement are
13 secured, in part, by deeds of trust granting Wells Fargo a first priority lien on the real
14 estate development projects known as (1) Silver Oaks, Unit No. 2, in Visalia, California;
15 (2) Parkside Village, Unit No. 1, in Dinuba, California; (3) Granite Ridge in Delano,
16 California; (4) Vineyard Estates in Wasco, California; (5) New Expressions in
17 Porterville, California; and (6) Willow Glen in Tulare, California (collectively, the
18 “Projects”). Debtor and Ennis Land’s obligations under the Interest Rate Agreement are
19 secured, in part, by a deed of trust recorded against Parkside Village, Unit No. 1. The
20 Debtor asserts an interest in only four of the 1,006 remaining and planned lots in the
21 Projects: (1) Lot 126 in Parkside Village, (2) Lot 92 in Silver Oaks, and (3-4) Lots 11
22 and 12 in Vineyard Estates (collectively, the “Wells Fargo Four Lots”).

23 Debtor and Ennis Land’s Loan obligations to Wells Fargo are also secured by
24 certain of Debtor’s and Ennis Land’s personal property as more specifically described in
25 the respective Deeds of Trust recorded against each of the Projects and as perfected by
26 the respective UCC-1 financing statements filed by Wells Fargo. Wells Fargo filed
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1 UCC-1 financing statements with the California Secretary of State with respect to each of
2 the Projects.

3 III. The Motion fails to demonstrate the extent of the use of Wells Fargo's
4 cash collateral, the benefit of the use of cash collateral to Wells Fargo's
5 other collateral or the value of the replacement lien to protect Wells Fargo.

6 When Debtor first notified Wells Fargo of Debtor's intent to seek use of cash
7 collateral prior to filing the Motion, Wells Fargo asked the Debtor to identify the source
8 of the funds the Debtor wanted to use. Only in that way could Wells Fargo determine the
9 extent of its interest in the cash collateral. Unfortunately, the Motion does not describe
10 the source of the funds designated for the Debtor's use. The Motion only acknowledges
11 that Wells Fargo has an interest in the cash collateral the Debtor seeks to use.

12 The Debtor's budget attached as part of its Motion to describe the use of the cash
13 collateral (the "Budget"), does not specify specific properties that will benefit from the
14 use of cash collateral. For example, the week of March 30, 2009, the Budget describes
15 that \$382,171 will be paid for property taxes. It does not identify the properties that will
16 benefit from having their property taxes paid. Wells Fargo cannot tell if its cash
17 collateral will be used to pay the property taxes on the real estate serving as collateral for
18 the Debtor's obligations to Wells Fargo. Such a payment for the Wells Fargo real estate
19 Projects taxes might well be acceptable to Wells Fargo. Payment of the taxes on other
20 property would not be acceptable. Because the Debtor owns a total of only four lots
21 which serve as collateral for Debtor's outstanding obligations to Wells Fargo, Wells
22 Fargo is concerned the \$382,171 is more likely to benefit some other creditor's property.
23 If there were a budget of specific expenses that would benefit Wells Fargo's collateral,
24 Wells Fargo might find that some of those expenses would be proper to pay with Wells
25 Fargo's cash collateral.

26 In describing its proposed adequate protection of replacement collateral, the
27 Debtor has lumped four creditors together and attempted, without analysis, to offer each
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1 such party a “lien junior to all existing liens, on all of its real properties.” Motion, at 5,
2 ¶16. Debtor provides no evidence that there is any equity in any of the real properties it
3 owns. As a result there is no showing of what, if any, value these junior position liens
4 will generate. The Debtor does not even indicate how many liens would be senior to the
5 proposed “junior liens” for Wells Fargo. If the other properties are similar to Wells
6 Fargo’s, there is no equity available. As noted above, the Debtor owns a total of four lots
7 that serve as collateral for the Debtor’s obligations to Wells Fargo. The Debtor values
8 those lots at \$925,000 in its Schedule A filed on February 13, 2009 [Doc. No. 17].
9 Those lots secure Debtor’s outstanding (and defaulted) obligations to Wells Fargo in
10 excess of \$30,000,000. It is clear that there is no equity available for any junior lien
11 claimants on those Wells Fargo lots.

12 The Debtor has provided no evidence of any other protection for Wells Fargo’s
13 position from other property of the Debtor.

14 IV. Conclusion.

15 The Debtor has made no showing of a basis to utilize Wells Fargo’s cash
16 collateral. More information could provide some basis for the use of cash collateral if it
17 would be used to protect and preserve Wells Fargo’s real property collateral pending
18 Wells Fargo’s foreclosure. Without such a showing the Debtor needs to demonstrate why
19 Wells Fargo will be adequately protected if Wells Fargo’s collateral is used for other
20 purposes. No evidence of adequate protection has been provided that there exists value
21 to replace the cash collateral the Debtor wants to use. What has been proposed does not
22 give any comfort that it is adequate protection for the use of cash.

23 As a result Wells Fargo respectfully requests that the Court deny the Motion with
24 respect to any collateral of Wells Fargo. Debtor should not be permitted to use any cash
25 collateral attributable to Wells Fargo or impose any junior lien on the Wells Fargo
26 collateral in favor of any other creditor.

1 As reflected in the Motion, the Debtor and Wells Fargo agreed to stipulate to
2 relief from the automatic stay so that Wells Fargo could seek to exercise its state law
3 remedies to foreclose on the Wells Fargo collateral. At a minimum, Wells Fargo's cash
4 collateral and real properties should remain unaffected by the Motion pending a ruling on
5 the soon to be filed motion to approve the stipulation for Wells Fargo to obtain relief
6 from stay.

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8 Dated: March 10, 2009

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